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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

HARRY R. GRAHAM and THELMA GRAHAM,

Petitioners,

versus

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petitioners, HARRY R. GRAHAM and THELMA GRAHAM, by and through their undersigned attorneys, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-styled case on March 22, 1967.

CITATIONS TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in the above-styled cause is recorded at 374 F.2d 340 (5th Cir. 1967).

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on March 22, 1967. The hearing was denied on May 8, 1967. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Is it a deprivation of a person's liberty and property without due process of law under the Fourteenth Amendment to the U. S. Constitution for agents of a State of the United States to arrest one of its citizens on the high seas and confiscate his property where said agents have no lawful authority to do so under State law?

STATUTE INVOLVED

The statutory provision involved is 42 U.S.C. Section 1983. This statute is printed in Appendix, infra, pp. 11.

STATEMENT

On August 4, 1965, the Petitioners filed a complaint in the United States District Court for the Southern District of Florida and sued the Respondents under 42 U.S.C., § 1983 for the alleged deprivation of certain federally guaranteed civil rights (R.1-10). The complaint

was dismissed by the District Court for failure to state a cause of action (R.16). The Petitioners appealed and the United States Court of Appeals for the Fifth Circuit affirmed. **Graham v. Hodges**, 374 F.2d 340 (5th Cir. 1967).

The Petitioners' complaint alleged the following facts. The Petitioners are citizens of the United States, residents of Monroe County, Florida and engaged in the business of commercial salt water crawfishing (R. 1). The Respondents are State Conservation Agents employed by the State of Florida, i.e., the Director of the Florida State Board of Conservation, the Chief Law Enforcement Officer of the Division of Salt Water Fisheries of the Florida State Board of Conservation, and the Superintendent of Area 9 of the State Board of Conservation, Division of Salt Water Fisheries (R. 1-2). From July 20, 1963 through July 23, 1963, and from July 21, 1964 through July 26, 1964, the Petitioners were arrested on 8 occasions by Agents of the Respondents at locations on the high seas located more than three geographic miles off the coast of the Florida Keys (R. 2-8). As a result of these arrests, agents of the Respondents have dismantled approximately 250 crawfish traps belonging to the Petitioners which resulted in $875.00 worth of property damage. Moreover these traps were unavailable for use by Petitioners to realize a potential average catch amounting to $2,500.00 (R. 5-6). The Petitioners were required to post a bail bond on each of the above arrests amounting to a total of $1,200.00 (R.2-7). Although the cases for which the Petitioners have been arrested were docketed in the Criminal Court of Record in and for Monroe County, Florida, none of the cases have been called for trial (R.4,6). The arrests of the Petitioners have caused a great deal of embarrassment and humiliation causing a great loss of reputation in

addition to mental anguish and suffering (R.4,6). As a result of the arrests the Petitioners have been required to retain counsel for the sum of $150.00 and has been required to make approximately 10 trips to the City of Key West, Florida, at a distance of 160 miles per round trip (R.4).

Petitioners allege that the arrests to which they were subjected and the dismantling of their property all occurred over three geographic miles off the coast of the Florida Keys (R. 4-8). Petitioners allege that these arrests are accordingly unlawful and that the deprivation of their liberty and property was accomplished by Agents of the State of Florida in violation of their Constitutional rights guaranteed by the Fourteenth Amendment to the United States Constitution (R. 8). Petitioner Graham prayed for actual damages in the amount of $4,700.00, mental anguish damages in the amount of $5,000.00 and exemplary damages in the amount of $10,000.00 (R. 9). Petitioner Thelma Graham prayed for actual damages in the amount of $295.00, mental anguish damages in the amount of $5,000.00 and exemplary damages in the amount of $10,000.00 (R. 9).

REASONS FOR GRANTING WRIT

1. The Petitioners' arrests and the confiscation and destruction of their property by the Respondents constitutes a deprivation of liberty and property by the State of Florida without according due process of law in violation of the Petitioners' federal constitutional rights guaranteed against State invasion by the due process clause of the Fourteenth Amendment to the United States Constitution. The Respondents acting under

color of State authority arrested the Petitioners on 8 different occasions for alleged fishing violations. See **Fla. Stat. 370.14.** In each case the arrest was made over three geographical miles off the coast of various Florida Keys in the Atlantic Ocean. In each case a great number of the Petitioners' crawfish traps were either dismantled or confiscated by Agents of the Respondents, thereby causing over $3,000.00 in property damage.

The State of Florida has long limited its territorial jurisdiction to three geographical miles South of the Florida Keys coastline. Article 1, Florida Constitution 1885; **Fla. Stat. 6.11.** It is therefore beyond dispute that the Respondents' Agents, as alleged in Petitioners' complaint, arrested the Petitioners outside the territorial jurisdiction of the State of Florida on 8 different occasions, i.e. south of the Florida Keys beyond the three mile seaward boundary.

The Florida Supreme Court in **Gay v. State,** Fla. 1941, 3 So.2d 514, held that an arrest made by a State Conservation Agent outside the territorial limits of Florida on the high seas was unlawful under Florida law. The defendant in that case had been convicted for resisting a lawful arrest by a State Conservation Agent. The evidence showed that the arrest was effected more than nine nautical miles off the west coast of Florida in the Gulf of Mexico. The Florida Suprme Court reversed the defendant's conviction for resisting arrest on the ground that Conservation Agents had no lawful authority to arrest the defendant outside the seaward boundaries of the State of Florida.

The Florida Supreme Court in **Mounier v. State**, Fla. 1965, 178 So.2d 714, held that an act committed three and four-fifths nautical miles off Plantation Key in a southeasterly direction was no violation of a statute prohibiting spear fishing in the "Upper Keys" of Monroe County, Florida under **Fla. Stat. 370.172(2)**. It was held that acts committed outside the seaward boundaries of the State and the Upper Keys on the high seas cannot constitute an offense under the laws of the State of Florida.

Fla. Stat. 370.021(5) Empowers State Conservation Officers to "enter upon any land or waters of the State for performance of their lawful duties..."

In the instant case the Agents of the Respondents acting under color of State law arrested the Petitioners on 8 different occasions outside the seaward boundaries of the State of Florida, i.e. more than three geographic miles South and Southeast off the coast of the Florida Keys. These arrests were consequently made in violation of State law for acts which were not committed in the State of Florida and consequently were not offenses under the laws of the State of Florida. The Agents of the Respondents, without a shred of legal authority, have arrested the Petitioners on 8 different occasions and caused over $3,000.00 worth of property damage to the Petitioners in effecting these arrests.

The Court has held in **Monroe v. Pape**, 365 U.S. 167 (1961), that arrests made without legal authority by State Officers constitute invasions of privacy guaranteed by the Fourteenth Amendment. Such conduct was held actionable under the **Civil Rights Act, 42 U.S.C. § 1983.**

It is submitted that the Petitioners' complaint setting forth the unlawful arrest and subsequent destruction of property states a valid claim for damages based on a deprivation of civil rights guaranteed by the Fourteenth Amendment.

2. The decision of the United States Court of Appeals for the Fifth Circuit in the instant case passes upon a question of great national interest affecting the relations between a State and its own citizens. The Court below has written an opinion of some length which in effect authorizes State officials to arrest its own citizens on the high seas. **Graham v. Hodges,** 374 F.2d 337, 340 (5th Cir. 1967). This Court in **Skiriotes v. Florida,** 313 U.S. 69 (1940), has held that the States may govern "the conduct of its citizens upon the high seas with respect to matters in which the State has legitimate interest and where there was no conflict acts of Congress." Id. at 77. However, no court, including this Court, has ever authorized the State to make arrests of its citizens on the high seas in an effort to effectuate extra territorial regulation of its citizens. Moreover, no court, including this Court, has ever sanctioned such conduct when the State official in effecting an arrest on the high seas is acting in violation of State law. The Court below in its decision is the first Court to pass upon this highly important issue. The resolution of the issue against the citizen and in favor of the State of Florida particularly affects those citizens residing in states which border on the Atlantic Ocean, the Gulf of Mexico and the Pacific Ocean, particularly those citizens who are engaged in commercial salt water fishing. Certainly the entire issue of whether a State may arrest one its own citizens on

the high seas is a matter of enormous national interest which ought to be resolved by this Court.

3. The decision of the United States Court of Appeals for the Fifth Circuit in the instant case is erroneous. The Court has concluded that a Florida Conservation Agent has the authority under State law to arrest a citizen of the State of Florida on the high seas. The Court relies on **Fla. Stat. 370.021(5)** which empowers the Florida Conservation Board's Division of Salt Water Fisheries "to **regulate** the operations of all fishermen and vessels of this State engaged in the taking of such fishery resources within or without the boundaries of such State waters..." It is submitted that this Statute does not even remotely empower Conservation Agents to make arrests of Florida citizens on the high seas. It merely empowers a State Agency, to regulate the activity of the State fishing industry on the high seas. Obviously it does not empower Conservation Agents with the power to make arrests on the high seas. On the contrary, **Fla. Stat. 370.021(5)** empowers State Conservation Agents to make arrests only upon the land or waters of the State.

The Court has erroneously dismissed the case of **Gay v. State**, Fla. 1941, 3 So.2d 514 as being inapplicable. That case, however, is directly applicable to the case at bar. The Florida Supreme Court therein held that a Conservation Agent may not lawfully arrest a citizen of the State outside the seaward boundary of the State of Florida. The United States District Court for the Southern District of Florida has reached a similar result based upon the **Gay** case. **United States v. Sams**, (S.D. Fla. No. 64-401-Cr-Cf, Jan. 11, 1965).

The Court also misapplies the Florida Supreme Court decision of **Mounier v. State**, Fla. 1965, 178 So.2d 714. The Court seeks to distinguish the Mounier case on the ground that the case does not stand for the proposition that Florida's Conservation Officials cannot make arrests on the high seas. Although **Mounier** did not technically reach this result, the decision certainly stands for the proposition that an act committed outside the seaward boundaries of the Upper Keys, Monroe County and the State of Florida does not constitute a violation of **Fla. Stat. 370.172(2)** prohibiting spear fishing in the Upper Keys of Monroe County, Florida. It would therefore follow as night the day that the State has no authority to arrest a citizen on the high seas for acts which do not constitute violations of State law. Accordingly, Florida's Conservation Officials have no jurisdiction to make arrests outside the three mile offshore boundary fixed by the State's Constitution.

It is submitted that on the basis of the **Gay** and **Mounier** decisions of the Florida Supreme Court as well as **Fla. Stat. 370.021(5)** the arrests of the Petitioners outside the seaward boundaries of the State of Florida on the high seas constitute unlawful arrests under the law of the State of Florida. The arrests effected by Agents of the Respondents are in direct violation of the law of the State of Florida. The Court below has misread the Florida law on the subject.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to the office of the Honorable EARL FAIRCLOTH, Attorney General, Capitol Building, Tallahassee, Florida, this 6 day of September, 1967.

Phillip A. Hubbart

PHILLIP A. HUBBART

APPENDIX A

42 U.S.C. §1983. Civil Action for Deprivation of Rights. Every person, who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceedings for redress.